

## **II. Response to Restriction Requirement**

In the Restriction Requirement, election of one of Groups I to VI, as follows, is required:

- I. Claims 1-9, 13-20, drawn to heteropolymeric compounds, classified in class 536, subclass 22.1;
- II. Claim 10, drawn to methods for treating viral infection, classified in class 514, subclass 44+;
- III. Claim 11, drawn to methods for treating cancer, classified in class 514, subclass 44+;
- IV. Claim 12, drawn to methods for treating microbial infections, classified in class 514, subclass 44+;
- V. Claims 21-27, drawn to pyrimidine nucleoside derivatives, classified in class 536, subclass 28.5; and
- VI. Claims 28-31, drawn to deoxyribose derivatives, classified in class 536, subclass 17.1.

Applicants hereby elect the Group I claims, claims 1-9 and 13-20, with partial traverse.

## **II. Traversal and Request for Modification of Restriction Requirement**

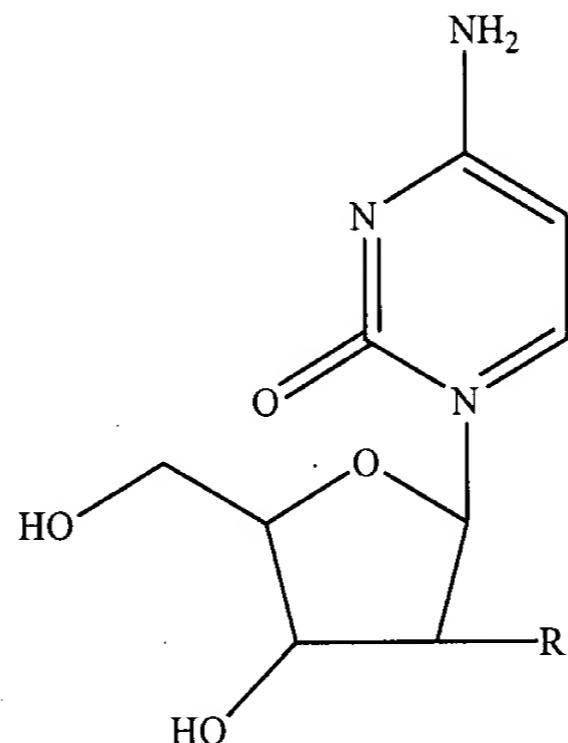
Applicants request modification of the restriction requirement, to permit prosecution of Group V (claims 21-27) and Group VI (claims 28-31) in this application, along with Group I (claims 1-9 and 13-20). In the Restriction Requirement, the Examiner states that the components of Groups I, V and VI are unrelated, and contain “different functional groups.”

The Examiner is reminded that under M.P.E.P. §803, restriction is not proper “[i]f

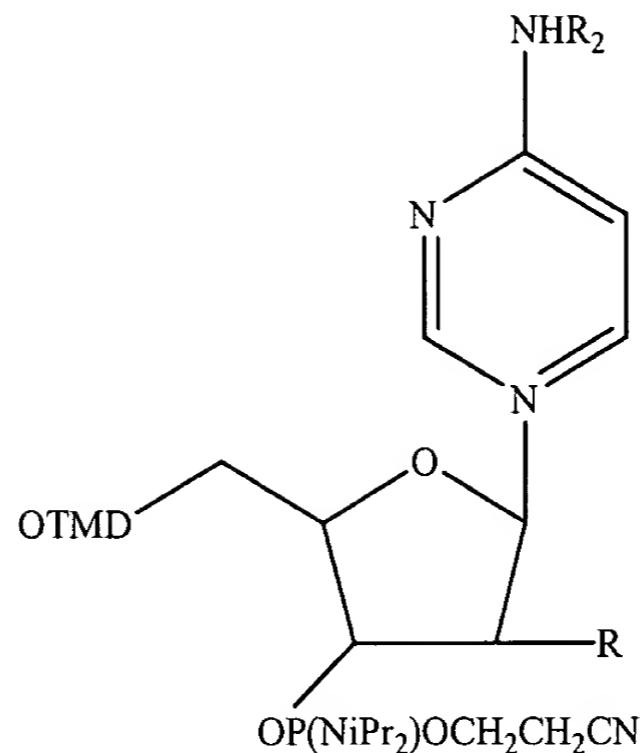
the search and examination of an entire application can be made without serious burden ...." As argued below, it is believed that a search of the Group I subject matter in the appropriate classes (including class 536, subclass 22.1) would identify references relevant to the Group V and Group VI claims. Further, search of the additional subclasses identified by the Examiner for Groups V and VI would not impose an undue burden on the Examiner.

#### A. Group V Claims

The Group V claims, claims 21-27, require a nucleotide of independent claim 21



or independent claim 23



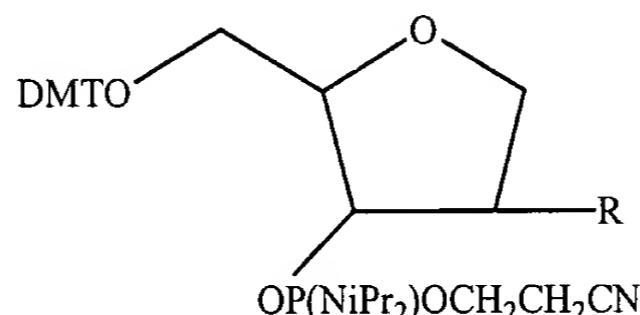
The Group V claims cover compounds which are monomeric building blocks for the polymeric compounds of Group I (independent claims 1 and 14). Claim 1 covers heteropolymeric compounds comprising a chain of heterocyclic derivatives of a nucleoside. Claim 14 covers heteropolymeric compounds wherein R<sup>1</sup> may be a heteropolymeric derivative of a nucleoside. As a result, it is believed that any search for the compounds of Group I will uncover the monomeric compounds of Group V.

In addition, class 536, subclass 28.5, which is identified by the Examiner as relevant to the Group V claims, is a relatively small class (a PTO database search uncovered 273 patents in this class). Hence, it is believed that there would be no undue burden for the Examiner to search and examine the Group V claims with the Group I claims in this application.

As a result, the Examiner is requested to modify the restriction requirement to permit prosecution of the Group V claims in this application.

#### B. Group VI Claims

The Group VI claims, claims 28-31, cover abasic nucleosides of formula (IV) of independent claim 28:



The compounds of the Group VI claims are monomeric building blocks for the polymeric compounds of Group I (independent claims 1 and 14). Claim 1 covers heteropolymeric compounds comprising a chain of abasic nucleosides. Claim 14 covers compounds wherein R<sup>1</sup> is not present. It is believed that any search for the compounds of Group I will uncover compounds of Group VI.

Further, the Group VI claims are classified by the Examiner in class 536, subclass 17.1, which is directed to carbohydrates and derivatives having a phosphorous atom. A search of the PTO database uncovered only 157 patents in this subclass. Hence, there would be no undue burden on the Examiner to search and examine the Group VI claims with the Group I claims in this application.

As a result, the Examiner is requested to modify the restriction requirement to permit prosecution of the Group VI claims in this application.

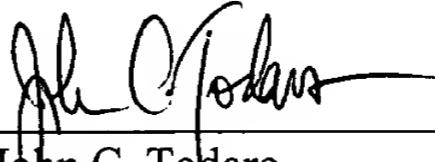
### **III. Conclusion**

In view of the foregoing, the Examiner is requested to modify the restriction requirement and permit examination of Groups I, V and VI in this application. It is requested that pending claims 1-9 and 13-31 be examined in this application.

Favorable action is earnestly solicited.

Respectfully submitted,

Dated: February 10, 2003

  
John C. Todaro  
Attorney for Applicants  
Registration No. 36,036

DARBY & DARBY  
805 Third Avenue  
New York, NY 10022  
(212) 527-7700

M:\1252\1g348us1\LWJ7762.WPD